

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

GS HOLISTIC, LLC,

Plaintiff,

v.

PUFF+ LLC d/b/a PUFF SMOKE
SHOP and HAMEEDULLAH
NOORISTANI,

Defendants.

No. 2:22-cv-2035 DAD DB

FINDINGS AND RECOMMENDATIONS

This matter came before the undersigned on October 27, 2023, pursuant to Local Rule 302(c)(19), for hearing of plaintiff's motion for default judgment. (ECF No. 18.) Attorneys Peter D. Ticktin and Thomas Leon appeared via Zoom on behalf of the plaintiff. No appearance was made by, or on behalf of, a defendant. At that time, oral argument was heard and the motion was taken under submission. Having considered all written materials submitted with respect to the motion, and after hearing oral argument, the undersigned recommends that the motion for default judgment be denied as explained below.

BACKGROUND

Plaintiff's counsel commenced this action on November 9, 2022, by filing a complaint and paying the required filing fee. (ECF No. 1.) The complaint alleges that plaintiff is the owner of

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1 three registered trademarks related to the Stündenglass brand. (Compl. (ECF No. 1) at 2.¹)
2 Stündenglass branded products of glass infusers and accessories are well-known for their
3 “superior smoking experience” and “have a significant following and appreciation amongst
4 consumers in the United States and internationally.” (Id. at 3.)

5 Defendant Hameedullah Nooristani owned and operated the Puff Smoke Shop located at
6 7250 Fair Oaks Blvd, Ste D, Carmichael, CA 95608. (Id. at 2.) On October 25, 2022, plaintiff’s
7 investigator purchased a counterfeit product bearing plaintiff’s mark from the defendants. (Id. at
8 6.) The complaint asserts causes of action for federal trademark and counterfeiting infringement
9 in violation of 15 U.S.C. § 1114, and false designation of origin and unfair competition in
10 violation of 15 U.S.C. § 1125(a). (Id. at 10-13.)

11 On January 11, 2023, plaintiff filed proof of service on the defendants. (ECF Nos. 4-5.)
12 On January 30, 2023, plaintiff requested defendants’ default. (ECF No. 6.) The Clerk entered
13 defendants’ default on February 1, 2023. (ECF No. 7.)

14 On April 20, 2023, plaintiff filed a motion for default judgment but erroneously noticed it
15 for hearing before the assigned District Judge. (ECF No. 10 & 12.) On August 23, 2023, plaintiff
16 filed the pending motion for default judgment. (ECF No. 14.) The matter came for hearing
17 before the undersigned on October 27, 2023. (ECF No. 18.) Attorneys Peter Ticktin and Thomas
18 Leon appeared on behalf of the plaintiff. No appearance was made by, or on behalf of, a
19 defendant.

20 **LEGAL STANDARDS**

21 **I. Default Judgment**

22 Federal Rule of Civil Procedure 55(b)(2) governs applications to the court for default
23 judgment. Upon entry of default, the complaint’s factual allegations regarding liability are taken
24 as true, while allegations regarding the amount of damages must be proven. Dundee Cement Co.
25 v. Howard Pipe & Concrete Prods., 722 F.2d 1319, 1323 (7th Cir. 1983) (citing Pope v. United
26 States, 323 U.S. 1 (1944); Geddes v. United Fin. Group, 559 F.2d 557 (9th Cir. 1977)); see also

27 ¹ Page number citations such as this one are to the page number reflected on the court’s CM/ECF
28 system and not to page numbers assigned by the parties.

¹ DirectTV v. Huynh, 503 F.3d 847, 851 (9th Cir. 2007); TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

Where damages are liquidated, i.e., capable of ascertainment from definite figures contained in documentary evidence or in detailed affidavits, judgment by default may be entered without a damages hearing. Dundee, 722 F.2d at 1323. Unliquidated and punitive damages, however, require “proving up” at an evidentiary hearing or through other means. Dundee, 722 F.2d at 1323-24; see also James v. Frame, 6 F.3d 307, 310-11 (5th Cir. 1993).

Granting or denying default judgment is within the court's sound discretion. Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986); Aldabe v. Aldabe, 616 F.2d. 1089, 1092 (9th Cir. 1980). The court is free to consider a variety of factors in exercising its discretion. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Among the factors that may be considered by the court are

¹⁷ Eitel, 782 F.2d at 1471-72 (citing 6 Moore's Federal Practice ¶ 55-05[2], at 55-24 to 55-26).

ANALYSIS

I. Plaintiff's Motion for Default Judgment

“Because the decision to grant default judgment is at the sole discretion of the Court, the Court may render judgment based on an assessment of the second and third Eitel factors alone.” GS Holistic, LLC v. Ravens Smoke Shop, Inc., Case No. CV 22-7199 MWF (Ex), 2023 WL 5504964, at *3 (C.D. Cal. July 10, 2023). As noted above, the second and third Eitel factors are (1) the merits of plaintiffs’ substantive claim, and (2) the sufficiency of the complaint. Eitel, 782 F.2d at 1471-72. The court considers the two factors together given the close relationship between the two inquiries. Craigslist, Inc. v. Naturemarket, Inc., 694 F. Supp.2d 1039, 1055 (2010). These two factors will favor entry of default judgment where the complaint sufficiently

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1 states a claim for relief upon which the plaintiff may recover. PepsiCo, Inc., 238 F. Supp.2d at
2 1175; see Danning v. Lavine, 572 F.2d 1386, 1388 (9th Cir. 1978).

3 As noted above, plaintiff's the complaint asserts causes of action for: (1) trademark
4 infringement in violation of 15 U.S.C. § 1114; and (2) false designation in violation of 15 U.S.C.
5 § 1125(a). These "claims are subject to the same test." Jada Toys, Inc. v. Mattel, Inc., 518 F.3d
6 628, 632 (9th Cir. 2008); see also Moroccanoil, Inc. v. Allstate Beauty Products, Inc., 847
7 F.Supp.2d 1197, 1201 (C.D. Cal. 2012) ("infringement claims are subject to the same test");
8 Phillip Morris USA Inc. v. Shalabi, 352 F.Supp.2d 1067, 1072 (C.D. Cal. 2004) ("Despite the
9 existence of three distinct claims before the Court, the essential elements of the federal claims
10 are identical and if met with adequate evidence are sufficient to establish liability under the state
11 law claim as well.").

12 In this regard "the critical determination is 'whether an alleged trademark infringer's use
13 of a mark creates a likelihood that the consuming public will be confused as to who makes what
14 product.'" Jada, 518 F.3d at 632 (quoting Brother Records, Inc. v. Jardine, 318 F.3d 900, 908
15 (9th Cir. 2003)). The likelihood of confusion is evaluated using an eight-factor test.

16 Those factors are: (1) strength of the plaintiff's mark/name; (2)
17 proximity of the parties' goods; (3) similarity of the marks/names;
18 (4) evidence of actual confusion; (5) marketing channels used; (6)
likely degree of purchaser care; (7) defendant's intent in selecting the
mark/name; and (8) likelihood of expansion of product lines.

19 Accuride Intern., Inc. v. Accuride Corp., 871 F.2d 1531, 1533-34 (9th Cir. 1989).

20 Plaintiff's motion for default judgment argues that the defendants "have engaged in the
21 unlawful manufacture, retail sale, and/or wholesale sales of counterfeit Stündenglass branded
22 glass infusers and related parts." (Pl.'s MDJ (ECF No. 14) at 5.) The motion for default argues
23 that defendants' "acts constitute willful trademark infringement" and that the defendants engaged
24 in "importing, advertising, displaying, distributing, selling, and/or offering for sale unauthorized
25 copies of Stündenglass branded products." (Id. at 6, 10.) Based on this conduct plaintiff seeks
26 \$150,000 in statutory damages plus costs. (Id. at 13.)

27 However, the only factual allegation found in the complaint related to defendants' conduct
28 is the simple allegation that on October 25, 2022, plaintiff's investigator "purchased a Cookies

1 Glass Infuser with a Stündenglass Mark affixed to it[.]” (Compl. (ECF No. 1) at 7.) In this
2 regard, the complaint alleges merely that on a single date, a single item, bearing a single
3 infringing mark was purchased at defendants’ store. No further factual allegations related to
4 defendants’ conduct are alleged.

5 Several courts have already found these vague and conclusory allegations insufficient to
6 grant default judgment. See GS HOLISTIC, LLC Plaintiff, v. CIGARETTE OUTLET SMOKE
7 SHOP, et al., Defendants., No. 1:23-cv-0281 TLN CKD, 2024 WL 519783, at *3 (E.D. Cal. Feb.
8 9, 2024) (“plaintiff’s allegations are insufficient for the purposes of default judgment”); GS
9 Holistic, LLC v. Kings Smokeshop, No. 1:23-cv-0292 TLN KJN, 2024 WL 150217, at *2 (E.D.
10 Cal. Jan. 12, 2024) (“The court denies plaintiff’s motion for default judgement because plaintiff
11 has not satisfied the second and third Eitel factors; i.e., the merits of plaintiff’s substantive claim
12 and the sufficiency of the complaint”); GS Holistic, LLC v. Ashes Plus Nine, Case No. 22-cv-
13 7101 LJC, 2023 WL 5993055, at *5 (N.D. Cal. Aug. 25, 2023) (“this Court and other district
14 courts in this Circuit have found similar (if not almost identical) allegations by GS Holistic
15 equally insufficient”); GS Holistic, LLC v. Ravens Smoke Shop, Inc., Case No. Cv22-7911 MWF
16 (Ex), 2023 WL 5504964, at *4 (C.D. Cal. July 10, 2023) (“As currently pled, these factual
17 allegations are vague and conclusory, and need not be accepted as true.”); GS Holistic, LLC v.
18 Alien Smoke Shop, Case No. 2:22-cv-5622 JLS DFM, 2023 WL 3402589, at *1 (C.D. Cal. Mar.
19 17, 2023) (“the Court is concerned that Plaintiff’s allegations of infringement here are insufficient
20 to support a finding that Defendants willfully infringed Plaintiff’s trademarks”).

21 The undersigned finds those cases persuasive and will, therefore, recommend that
22 plaintiff’s motion for default judgment be denied without prejudice to renewal.²

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28 ² Plaintiff could likely cure the defects noted above by amending the complaint and the motion
for default judgment to provide additional factual allegations in support the complaint’s claims.

CONCLUSION

Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's April 20, 2023 motion for default judgment (ECF No. 10), re-noticed on August 23, 2023 (ECF No. 14) be denied without prejudice to renewal.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: February 16, 2024

/s/ DEBORAH BARNES

UNITED STATES MAGISTRATE JUDGE

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